

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEITH YOHN,

Plaintiff,

No. 08-CV-10008-DT

vs.

Hon. Gerald E. Rosen

MARY SUE COLEMAN, et al.,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION
TO STRIKE PLAINTIFF'S MARCH 31, 2008 "AFFIDAVIT"**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on May 6, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

This matter is presently before the Court on Defendants' April 8, 2008 Motion to Strike Plaintiff's Affidavit, which was filed on March 31, 2008. Plaintiff has responded to Defendants' motion and Defendants have replied. Having reviewed and considered the parties' pleadings, the Court has determined that Defendants should be granted the relief requested.

As Defendants point out, although captioned as an "Affidavit," the contents of Plaintiff's March 31, 2008 pleading make clear that this "affidavit" is actually a "sur-reply brief." There is no provision for sur-reply or supplemental briefs in the Local Court Rules. See Local Rule 7.1(c) which permits the filing of one brief in support of a motion,

one brief in response to the motion, and one reply brief. Further, Plaintiff has has not sought leave of the Court to deviate from the Local Rules to respond to Defendants' reply brief or to supplement his own response brief. For these reasons, the Court will not consider Plaintiff's "affidavit."

In his response brief, Plaintiff argues that Defendants' motion for summary judgment itself should be stricken because it was filed before completion of discovery. The Court finds no merit in Plaintiff's contention. Defendants seek summary judgment, in part, based upon immunity and qualified immunity. The Supreme Court and the Sixth Circuit have both expressly directed lower courts that qualified immunity motions must be decided before defendants are required to go through discovery. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Skousen v. Brighton High School*, 305 F.3d 520, 527 (6th Cir. 2002).

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Strike Plaintiff's Affidavit [Dkt. # 22] is GRANTED. Accordingly,

IT IS FURTHER ORDERED that Plaintiff's March 31, 2008 Affidavit [Dkt. # 21] be STRICKEN from the docket in this case.

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: May 6, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 6, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager